



U.S. Citizenship
and Immigration
Services

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Date:

SEP 13 2004

FILE:

Office: SAN FRANCISCO, CA (FRESNO, CA)

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 322 of the former Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Interim District Director, San Francisco (Fresno), California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 2, 1982, in Mexico. The applicant was legally adopted in California by [REDACTED] on November 22, 1991. The record reflects that the applicant's adoptive mother [REDACTED] was born in the United States and that she is a U.S. citizen. The applicant obtained U.S. lawful permanent resident status on August 9, 1994, and she presently seeks a certificate of U.S. citizenship under section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433.

The record reflects that [REDACTED] filed a Form N-643, Application for Certificate of Citizenship on Behalf of An Adopted Child by U.S. Citizen Adoptive Parents (N-643 application) on October 4, 1999. On September 24, 2003, the director determined that the applicant failed to meet age requirements for obtaining citizenship under section 322 of the former Act. The application was denied accordingly.

On appeal, the applicant, through her mother, asserts that the applicant was under the age of eighteen when she filed her citizenship application and that she therefore met the age requirements set forth in the Act.

Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.
- 4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years . . . and the child meets the requirements for being a child under either of such subparagraphs (except to the extent that the child is described in clause (ii) of subparagraph (E) or (F) of section 1101(b)(1) of this title) and the child meets the requirements for being a child under either of such subparagraphs.

....

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

Section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E), states, in pertinent part, that the term “child” means an unmarried person under twenty-one years of age who is-

- (i) [A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years.

The record contains adoption decree evidence establishing that the applicant was under the age of sixteen when she was adopted by [REDACTED]. The record reflects further that the applicant was in the legal custody of [REDACTED] and that she resided with [REDACTED] for at least two years. The applicant therefore qualifies as a “child” for section 322(a)(4) purposes.

The record additionally reflects that the applicant satisfied the requirements set forth in subsections (1), (2), and (3) of section 322(a) of the former Act. Nevertheless, the AAO finds that the applicant failed to establish that her N-643 application was approved by the Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, CIS) prior to her eighteenth birthday, or that she took an oath of allegiance prior to her eighteenth birthday, as required by section 322(b) of the former Act. The AAO notes that the requirements set forth in section 322(b) of the former Act are statutorily mandated, and that they are not affected or changed by INS (CIS) processing delays. Accordingly, the AAO finds that the applicant does not qualify for citizenship under section 322 of the former Act.¹

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish U.S. citizenship by a preponderance of the evidence. In this case, the burden has not been met and the appeal will be dismissed.²

ORDER: The appeal is dismissed.

¹ The Child Citizenship Act of 2000 (CCA) repealed section 321 of the former Act, 8 U.S.C. § 1432, and amended sections 320 and 322 of the former Act, 8 U.S.C. §§ 1431 and 1433. The amended provisions of sections 320 and 322 are not retroactive and apply only to persons who were not yet 18-years-old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of eighteen on February 27, 2001, she does not qualify for consideration under the CCA.

² The AAO notes that this decision is without prejudice to the applicant’s applying for naturalization under section 316 of the Act, 8 U.S.C. § 1427.